HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18535 of 2006

Dated:26.09.2006

Between:

Pusapati Sitarama Raju.

…Petitioner

and

The Assistant Divisional Engineer and others.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18535 of 2006

ORDER:

The petitioner is a Chartered Accountant, having his Office in Visakhapatnam. He is availing the power supply from the Andhra Pradesh Eastern Power Distribution Company Limited (APEPDCL). He got the service connection under category-I (domestic). The petitioner's premises was inspected on 11.11.2004 by the Assistant Engineer of APEPDCL. He submitted a report on 11.11.2004 pointing out that the petitioner resorted to malpractice, and that though the service connection was released under domestic category, he is utilizing the same for running the Chartered Accountant's Office. The petitioner then addressed a letter on 17.11.2004 stating that he obtained the domestic connection and not the commercial connection. In spite of the same, the first respondent issued a communication dated 26.11.2004 provisionally assessing the value of the energy allegedly misused at Rs.12,790/- and advised the petitioner to pay half of the amount. The petitioner paid the amount and submitted the explanation, in vain. Therefore, he filed the present Writ Petition seeking a writ of mandamus declaring that the petitioner is liable to pay the electricity charges at domestic rates, and for a consequential direction to refund the amount of Rs.12,790/-.

At the stage of admission itself, the learned counsel for the petitioner brought to the notice of this Court the decisions of the Supreme Court in **Dr.D.M.Surti v. State of Gujarat**[1] and **V.Sasidharan v. M/s.Peter and Karunakar**[2]. In the first of the two decisions, the Supreme Court held that service connection given to a Doctor's Clinic cannot be treated as a commercial category and in the second judgment the Supreme Court held that an Advocate's Office cannot be treated as an Establishment under the provisions of the Kerala Shops and Commercial Establishments Act, 1960. Based on these judgments, the learned Counsel contends that it is highly arbitrary on the part of the respondents to treat the Office of the petitioner under commercial category. The learned Standing Counsel for APEPDCL does not dispute the legal position.

This Court in **S.V.G.Ratna Gupta v. State of A.P**[3] has considered the question whether the Office of the Chartered Accountant is a commercial establishment within the meaning of Section 2(5) of the Andhra Pradesh Shops and Establishments Act, 1988. After referring to the decisions of the Supreme Court in **Dr.D.M.Surti v. State of Gujarat** (supra) and **V.Sasidharan v. M/s.Peter and Karunakar** (supra), and also the judgment of the Karnataka High Court in **Phillipos & Co. v. State**[4] this Court laid down as under.

> …The word 'profession' employed under sub-section (5) of Section 2 of the Act cannot be taken literally and in a general way including the professions, such as, medicine, legal or Chartered Accountancy. Since these are the professions run by the individual or the collective intellect and skill of respective professionals, there is no element of rendering material services either to the customers or to the community at large with the help of employees. These professionals, no doubt, carry on profession, but not with profit motive and are regulated by Code of Conduct, be it under Medical Council Act (for doctors), Bar Council Act or Advocates Act (for Advocates) or Chartered Accountants Act (for Chartered Accountants). The said professionals may earn livelihood out of their professional work, but the same cannot be equated as working for any profit or gain with the aid of employees. Concisely speaking, pursuit of professional duties of a doctor, a Lawyer or a Chartered Accountant cannot be equated as doing a profession in real sense for

profit or gain with the aid of employees. The doctors, Lawyers or Chartered Accountants, even if they employ certain staff, do not partake the character of 'commercial establishment'. In the instant cases, the Court of Magistrate has grossly erred that the Office of the Chartered Accountant is a commercial establishment within the meaning of Section 2(5) of the Act. Even sitting in the premises of a branch office of A.P.Electricity Board for the purpose of billing does not make any difference.

Following the above judgment, this Writ Petition is disposed of in the following manner.

i) the Office of the Chartered Accountant run by the petitioner cannot be treated as category-II (commercial/non-domestic) and the service connection shall have to be treated as Category-I (domestic);

ii) the respondents shall hereinafter bill the current consumption by the petitioner's establishment under Category-I (domestic);

iii) and if the petitioner has already paid the current consumption charges at the tariff applicable to commercial establishments, the excess amount, if any, shall be adjusted in the future bills.

There shall be no order as to costs.

(V.V.S.RAO, J)

26.09.2006
vs

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[1] AIR 1969 SC 63

[2] AIR 1984 SC 1700

[3] 1993(2) ALT (Crl.) 305

[4] 1990 (1) LLJ 227 (Karnataka)